

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

KRISTY FINOIMOANA et al.,

Plaintiffs,

vs.

FIRST HORIZON HOME LOAN CORP. et al.,

Defendants.

3:11-cv-00722-RCJ-VPC

ORDER

This is a standard foreclosure case involving one property. The Complaint filed in state court lists nine causes of action: (1) Unfair Debt Collection Practices Under Nevada Revised Statutes (“NRS”) section 649.370; (2) Unfair and Deceptive Trade Practices Under NRS sections 41.600 and 598.0923; (3) Unfair Lending Practices Under NRS section 598D.100; (4) Breach of the Covenant of Good Faith and Fair Dealing; (5) Violation of NRS section 107.080; (6) Quiet Title; (7) Fraud; (8) Slander of Title; and (9) Abuse of Process. The case is not part of Case No. 2:09-md-02119-JAT in the District of Arizona and does not appear eligible for transfer. Defendants have moved to dismiss and to expunge the lis pendens. For the reasons given herein, the Court grants the motions.

I. THE PROPERTY

Kristy C. and R. Russell Fonoimoana¹ gave lender First Horizon Home Loan Corp. (“First Horizon”) a \$311,000 promissory note (the “Note”) to purchase real property at 4310

¹The Complaint spells Plaintiffs’ surname as “Finoimoana,” but the DOT spells it “Fonoimoana.”

Desert Highlands Dr., Sparks, NV 89436 (the “Property”). (*See* Deed of Trust (“DOT”) 1–3, Apr. 7, 2004, ECF No. 4-1). The trustee was Stewart Title of Northern Nevada, (*see id.* 2), and Mortgage Electronic Registration Systems, Inc. (“MERS”) was not a party to the DOT, (*see generally id.*). Plaintiffs opened two home equity lines of credit (“HELOC”) against the Property, the first for \$117,000 on October 6, 2004, and the second for \$200,000 on December 6, 2006. (*See* First HELOC DOT 1–2, Oct. 6, 2004, ECF No. 4-2; Second HELOC DOT 1–2, Dec. 6, 2006, ECF No. 4-3). Both HELOCs were with lender First Horizon and trustee Fidelity National Title Co. (*See* First HELOC DOT 1–2, Oct. 6, 2004, ECF No. 4-2; Second HELOC DOT 1–2, Dec. 6, 2006, ECF No. 4-3). First Horizon assigned the DOT to Metlife Home Loans (“Metlife”). (*See* Assignment, July 20, 2006, ECF No. 4-4). Metlife substituted UTLS Default Services, LLC (“UTLS”) as trustee. (*See* Substitution, May 26, 2010, ECF No. 4-5). UTLS filed the notice of default (“NOD”) based on a default of unspecified amount as of February 1, 2010. (*See* NOD, June 30, 2010, ECF No. 4-6). The foreclosure was therefore statutorily proper. *See* Nev. Rev. Stat. § 107.080(2)(c). UTLS noticed a trustee’s sale for August 3, 2011, which occurred on that date. (*See* Notice of Sale (“NOS”), July 6, 2011, ECF No. 4-8; Trustee’s Deed, Sept. 8, 2011, ECF No. 4-9). The Property is not eligible for the state Foreclosure Mediation Program. (FMP Certificate, Sept. 28, 2010, ECF No. 4-7).

II. ANALYSIS

The foreclosure was statutorily proper. The remaining claims fail for reasons given in substantially identical cases.

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CONCLUSION

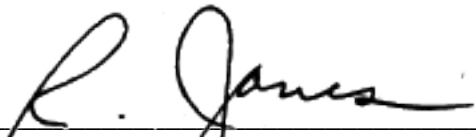
IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 4) is GRANTED.

IT IS FURTHER ORDERED that the Motion to Dismiss and Expunge Lis Pendens (ECF No. 14) is GRANTED.

IT IS FURTHER ORDERED that the Clerk shall enter judgment and close the case.

IT IS SO ORDERED.

Dated this 6th day of December, 2011.



ROBERT C. JONES
United States District Judge